IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1985 OF 2006.

Kabir Noor Mohmad Vishram. ... Petitioner.

Versus.

Rashidkhan M.Khan Quraishi & ors. ... Respondents.

Shri Shrisail Sakhare for the Petitioner.

Shri Y.M.Nakhwa, A.P.P. for the Respondent-State.

CORAM : ABHAY S.OKA, J.

DATED : 9th October, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Petitioner. The Petitioner is the original Accused No.3 in a complaint filed by the 1st Respondent under section 138 of the Negotiable Instruments Act. The challenge in this petition is to the order dated 15th November 2005 by which re-examination of the 1st Respondent has been permitted under section 138 of the Indian Evidence Act, 1872.

2. The learned Advocate for the Petitioner submits that by permitting re-examination, the effect of the alleged admission given by the 1st Respondent is wiped out.

3. I find that the re-examination has been permitted as regards the explanation of certain matters referred to in the cross-examination of the 1st Respondent. If re-examination is permitted, the Petitioner can always seek permission of the trial Court

for further cross-examination.

4. The remedy under Article 227 of the Constitution of India is extra-ordinary remedy. No interference is called for with the order impugned in this petition under Article 227 of the Constitution of India. The petition is rejected.

5. At this stage Shri Sakhare, learned Advocate appearing for the Petitioner states that re-examination of the 1st Respondent on the basis of the impugned order is already completed. He states that in view of the pendency of the petition, the Advocate appearing for the Petitioner declined to cross-examine the 1st Respondent. If the impugned order is already implemented, the said fact ought to have been brought to the notice of this Court before arguing the case on merits.

6. It will be open for the Petitioner to make appropriate application before the trial Court for seeking permission to cross examine the witness..

Judge.